



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 17, 1995

Mr. David M. Douglas  
Assistant Chief  
Legal Services  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR95-1079

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35792.

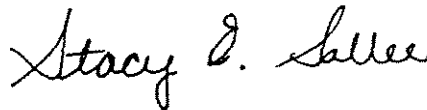
The Texas Department of Public Safety (the "department") received a request for "additional information" regarding an automobile accident on August 10, 1995, including toxicology reports, blood alcohol reports, witness statements, and officers' field notes. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.108(a) excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

You state that there is a possibility that one of the drivers involved in this accident will be charged with criminal negligent homicide with a motor vehicle. The Assistant District Attorney for Williamson County has not yet decided whether to prosecute. Therefore, with the exception of information that would typically appear on the first page of an offense report, the department may withhold the remainder of the requested information under section 552.108.<sup>1</sup> See Open Records Decision No. 286 (1981) at 1 ("Since the matter is still under investigation and since no decision about whether to prosecute has been made, other portions of the file may be withheld from disclosure under section [552.108].").

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/rho

Ref.: ID# 35792

Enclosures: Submitted documents

cc: Mr. LeRoy Gunderson  
Investigator  
Michalk, Beatty & Alcozer, PLLC  
2210 East Central Texas Expressway  
Killeen, Texas 76543  
(w/o enclosures)

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<sup>1</sup>As we have concluded that the department may withhold the requested information under section 552.108, we need not address whether section 552.103 excepts this information from disclosure.